UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DASH REGULATORY TECHNOLOGIES, LLC,

Plaintiff,

- against -

AXIOM SOFTWARE LABORATORIES INC,

Defendant.

21-cv-8751 (JGK)

MEMORANDUM OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The plaintiff, DASH Regulatory Technologies, LLC ("Dash"), brings this action against the defendant, Axiom Software Laboratories Inc. ("Axiom"), for alleged misappropriation of trade secrets in violation of the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836 et seq., and in violation of New York state law.

The defendant now moves to dismiss the plaintiff's second amended complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(7) for failure to state a claim and failure to join an indispensable party. For the following reasons, the defendant's motion to dismiss is **denied.**

I.

The following facts are taken from the plaintiff's Second Amended Complaint ("Complaint"), ECF No. 21, unless otherwise noted. The plaintiff, Dash, is a "leader in regulatory capital compliance that provides comprehensive software solutions for

the United States broker-dealer industry." Compl. ¶ 1. The defendant, Axiom, is a "global company that provides regulatory services, including risk analytics, data-management, and regulatory-reporting solutions." Id. ¶ 2. Dash formerly employed Thomas Martin, who began at Dash on October 24, 2017 as a Business Development Manager. Id. ¶ 7. Martin was bound to an Employment Agreement that contained "provisions directed to employee duties, confidential information (including trade secrets, and restrictive covenants . . . [and] a noncompetition clause restricting [Martin] from competing with Dash for a 'Restricted Period' of 90 days immediately following separation." Id.

As a Business Development Manager, Martin was responsible for "sales, account management, and business development." Id. ¶ 8. On March 15, 2019, Martin "became the sole person at Dash responsible for sales and business development." Id. ¶ 8. Because of this, Dash "entrusted [Martin] with a high level of responsibility."

When Martin joined Dash, he gained access to Dash's confidential information, "including trade secrets," on his personal laptop, personal cellphone, and Dash desktop computer. Id. ¶ 9. Dash alleges that the trade secret information that Martin had access to "included client proposals, contact information of key decision makers for Dash clients and

prospective clients, pricing information including yearly revenue and ramp ups, discounts, client lists including contract status and expiration dates associated with each client . . . , sales strategies based on detailed knowledge of client needs, contract terms, quality control information, and specific client preferences regarding what features and products each client requires." Id. ¶ 10. The trade secrets took the form of "Word documents, Excel spreadsheets, databases, proposal materials, notes, and emails." Id. ¶ 11. Dash alleges that this "detailed information about each client," which it has spent "significant time and resources gathering and developing," is "central to the successful operation of Dash's business" because "knowledge of whom to contact, when to contact them, and what solutions or offerings to propose are crucial details for developing and maintaining business." Id. ¶ 10.

Dash alleges several measures that it has taken to ensure that its trade secrets remain secret. To access the trade secrets on a device, "a user must log into the device with specific credentials and a password," and Dash "closely monitors" which employees have access to trade secrets and the "specific categories" of trade secrets to which these employees have access. Id. ¶ 12. Upon an employee's termination of employment with Dash, Dash "takes careful steps to ensure" that all trade secrets are removed from the employee's personal

devices before they leave. Id. Moreover, "[a]ll Dash employees" are bound to each of "a Bring Your Own Device Policy, a Code of Conduct, and an Employee Policies and Procedures Handbook," in an effort to ensure that Dash's trade secrets remain safe, secure, and confidential. Id. ¶ 13.

Dash alleges, upon information and belief, that Martin began to consider leaving Dash to join Axiom "sometime in early 2019, if not sooner." Id. ¶ 14. Dash alleges that, on January 3, 2019, Martin began to take Dash's trade secrets "for his own purposes and Axiom's benefit." Id. First, Dash alleges that, on January 3, 2019, Martin "sent himself, to his personal Gmail account, a list of eleven Dash customer contracts that had been verbally agreed to but had not yet been executed by the customers," and included in the email "revenue dollars by [the] customer and the percent increase from the prior year." Id. Second, on March 25, 2019, Martin allegedly emailed himself "financial information regarding two executed contracts, totaling $330,000, and information regarding a contract returned with redlines for an amount of $75,000 with the potential of growing to $180,000 by 2021." Id. Third, on May 9, 2019, Martin emailed himself "a screenshot of a spreadsheet showing the status of 28 customer contracts and sensitive Dash pricing information . . . includ[ing] client names, revenue, and [the] status of the contract identifying whether it was cancelled, out

for signature, due for follow-up, or an executed contract." Id. Dash alleges that this information from 2019 was "particularly relevant" because the ordinary terms of its contracts are "two to three years, which makes the [2019] information particularly valuable for targeting potential clients in 2021 and 2022." Id.

On October 10, 2019, Martin submitted his formal resignation to Dash, and later signed a Separation Agreement on October 24, 2019. Id. ¶ 15. Martin continued to work for Dash until December 31, 2019. Id. ¶ 16. As provided for by Martin's Employment Agreement, March 30, 2020 was the last day of his 90 day Restricted Period. Id. ¶ 18.

Before Martin's last day at Dash, Dash removed "all access" to its trade secrets on Martin's devices. Id. ¶ 19. However, because Martin had allegedly emailed trade secrets to himself, Dash alleges that it was "unaware" that Martin had done so and therefore "could not remove" access to those trade secrets that Martin had sent to himself. Id.

Dash alleges that Martin began working for Axiom "at least by March 2020." Dash alleges that it sent Martin a letter on March 13, 2020, "concerning his recent employment at Axiom and notifying [Martin] of his ongoing obligations to Dash." Id. ¶ 27. Martin responded to Dash's letter by email on May 4, 2020, stating that "I am aware of no confidential Dash information in my possession." Id.

On April 16, 2020, Dash mistakenly received an email "addressed to [Martin's] old Dash e-mail from a potential customer regarding a second meeting with Axiom." Id. ¶ 21. On that same day, another potential Dash client emailed Martin's old Dash email address in order to cancel a second meeting with Axiom. Id. ¶ 24. Dash alleges that this second email "was intended for receipt by [Martin] at Axiom" and allegedly shows that Martin "solicited a prospective Dash client away from Dash" by using Dash's trade secrets "to steal business from Dash." Id.

On May 1, 2020, an existing Dash client emailed Martin's old Dash email address with the subject line "Axiom meeting." Id. ¶ 25. On June 22, 2020, the same client emailed Martin's old email address again, attaching a License Services Agreement between that client and Axiom. Id. Dash alleges that the emails were intended to be received by Martin at Axiom, and that this client's contract information was "included in the list of Dash clients and contract information" that Martin had sent to his personal email account on January 3, 2019. Id.

On July 26, 2021, another existing Dash client emailed Martin's old Dash email address, noting that "there has been good progress made on Axiom," and attaching a Broker Dealer Pricing Proposal that Axiom had presented to that client. Id. ¶ 26. The Broker Dealer Pricing Proposal allegedly includes a

statement "that 10 or more previous Dash clients have begun working with Axiom in the past 18 months," which Dash alleges "is approximately how long Martin had been working at Axiom at the time [the Broker Dealer Pricing Proposal] was circulated." Id. The Broker Dealer Pricing Proposal also "contain[ed] details of SEC solution components to target the needs of this Dash client" and "advertises price details that are similar to but more favorable than Dash prices." Id. Dash alleges that the email was intended to be received by Martin at Axiom, and that the client "was listed on the spreadsheet[] which [Martin] emailed to himself on May 9, 2019." Id.

Dash alleges that it has "lost clients and revenue to Axiom" as a result of Axiom's alleged use of Dash's trade secrets. Id. ¶ 28. Specifically, Dash alleges that it "has lost at least two client contracts and expects to lose at least another four client contracts," resulting in millions of dollars in projected lost revenue. Id. Dash brings claims for misappropriation of trade secrets under the DTSA and New York state law.

II.

In deciding a motion to dismiss pursuant to Rule 12(b)(6), the allegations in the complaint are accepted as true, and all reasonable inferences must be drawn in the plaintiff's favor. McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir.

2007). The Court's function on a motion to dismiss is "not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient." Goldman v. Belden, 754 F.2d 1059, 1067 (2d Cir. 1985). The Court should not dismiss the complaint if the plaintiff has stated "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). While the Court should construe the factual allegations in the light most favorable to the plaintiff, it need not accept as true legal conclusions contained in the complaint. Id.

III.

The DTSA provides that "[a]n owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). For information to constitute a trade secret, (A) the owner must have "taken reasonable measures to keep such information secret," and (B) the information must "derive[] independent economic value, actual or potential, from not being generally known to, and not being

readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information." Id. § 1839(3)(A)-(B). "Misappropriation" includes "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means." Id. § 1839(5).

To state a claim for trade secret misappropriation under the DTSA, a plaintiff must show that (1) it possessed a trade secret, and (2) the defendant misappropriated that trade secret. ExpertConnect, L.L.C. v. Fowler, No. 18-cv-4828, 2019 WL 3004161 at *3 (S.D.N.Y. July 10, 2019); see also N. Atl. Instruments, Inc. v. Huber, 188 F.3d 38, 43-44 (2d Cir. 1999) (stating that the same test governs a New York state law claim for misappropriation of trade secrets). When evaluating claims under the DTSA, courts in this district "often rely on cases discussing misappropriation under New York law." ExpertConnect, 2019 WL 3004161, at *4 n.1. This is because "the requirements for showing a misappropriation of a trade secret under the DTSA are similar to those for misappropriation under New York law." Id. Because federal and state law claims for misappropriation of trade secrets are analyzed similarly, "[i]f a complaint sufficiently alleges a claim under the DTSA, it also sufficiently pleads misappropriation of trade secrets under New

York law." Kraus USA, Inc. v. Magarik, No. 17-cv-6541, 2020 WL 2415670, at *5 (S.D.N.Y. May 12, 2020).

First, Axiom argues that Dash has failed to allege, with sufficient particularity, the trade secrets that were misappropriated. "[D]istrict courts in this circuit routinely require that plaintiffs plead their trade secrets with sufficient specificity to inform the defendants of what they are alleged to have misappropriated." Zabit v. Brandometry, LLC, 540 F. Supp. 3d 412, 422 (S.D.N.Y. 2021). However, Dash alleges specifically that Martin emailed himself "a list of eleven Dash customer contracts . . . includ[ing] revenue dollars by [the] customer[s] and the percent increase from the prior year," "financial information regarding two executed contracts, totaling $330,000, and information regarding a contract returned with redlines for an amount of $75,000 with the potential of growing to $180,000 by 2021," and "a screenshot of a spreadsheet showing the status of 28 customer contracts and sensitive Dash pricing information . . . includ[ing] client names, revenue, and status[es] of the contract[s] identifying whether [they were] cancelled, out for signature, due for follow-up, or an executed contract." Compl. ¶ 14. These allegations are more than sufficient to allege with particularity the trade secrets allegedly misappropriated from Dash. See In re Dana Corp., 574 F.3d 129, 152 (2d Cir. 2009) ("Confidential proprietary data

relating to pricing, costs, systems, and methods are protected by trade secret law.").

Axiom relies on a line of cases to argue that Dash has not pleaded its trade secrets with requisite specificity, but those cases are easily distinguishable. Dash does not allege trade secrets which are "vague and indefinite piece[s] of information," Broker Genius, Inc. v. Zalta, 280 F. Supp. 3d 495, 510 (S.D.N.Y. 2017), because it has specified exactly which contracts, customer pricing information, and client preferences Martin is alleged to have sent to himself. For the same reason, Dash has also not "[a]lleg[ed] the existence of general categories of confidential information, without providing any details to generally define the trade secrets at issue," because Dash has specified which trade secrets Axiom allegedly misappropriated. Cf. Elsevier Inc. v. Doctor Evidence, LLC, No. 17-cv-5540, 2018 WL 447906, at *6 (S.D.N.Y. Jan. 23, 2018) (finding that alleged trade secrets of "clinical methods," "processes" and "interpretation of data" were not pleaded with sufficient particularity); Sapir v. Rosen, No. 20-cv-6191, 2021 WL 4482277, at *7 (S.D.N.Y. Sept. 30, 2021) (finding that trade secrets were insufficiently particular where the descriptors were too general). As pleaded, Dash has more than sufficiently identified "the general contours of [its] alleged trade

secrets." Dardashtian v. Gitman, No. 17-cv-4327, 2017 WL6398718, at *5 (S.D.N.Y. Nov. 28, 2017).

Dash has also pleaded sufficiently that Axiom was in possession of, and misappropriated, Dash's trade secrets. Dash alleges that it mistakenly received three emails intended for Martin, while Martin was working at Axiom, from existing Dash clients who were now engaged in business with Axiom and which emails contained elements of Dash's trade secret information that Martin had sent to his personal email address upon his departure from Dash. See Compl. ¶¶ 21-26. One of those emails, sent by an existing Dash client, also included a statement "that 10 or more previous Dash clients ha[d] begun working with Axiom in the past 18 months," a time period which allegedly coincided with "how long Martin had been working at Axiom" at the time that email was sent. Id. ¶ 26. These alleged facts permit the reasonable inference that Axiom, through its employee Martin, misappropriated Dash's trade secrets in an effort to poach Dash's existing customers. See Riviello v. Waldron, 391 N.E.2d 1278, 1281 (N.Y. 1979) (an employee's tortious acts are imputable to the employer if "the act was done while the servant was doing his master's work, no matter how irregularly, or with what disregard of instructions"). The Broker Dealer Pricing Proposal that Axiom used to solicit an existing Dash client was tailored to Dash's own specific understanding of that client's

particular needs, which would not have been possible unless Axiom knew of Dash's trade secret information for that client. See ExpertConnect, 2019 WL 3004161, at *6 ("The Complaint also plausibly pleads misappropriation based on the theory that [the] [d]efendants disclosed and used [the plaintiff's] trade secrets to solicit [the plaintiff's] clients without [the plaintiff's] consent."); Am. Bldg. Maint. Co. of N.Y. v. Acme Prop. Servs., Inc., 515 F. Supp. 2d 298, 308-09 (N.D.N.Y. 2007) ("[W]here . . . it would be difficult to duplicate a customer list because it reflected individual customer preferences, trade secret protection should apply.").

Finally, Axiom argues that, in any event, Dash is not entitled to injunctive relief for its trade secrets claim. However, the DTSA explicitly provides that an injunction may be appropriate relief for actions brought under the statute. See 18 U.S.C. § 1836(b)(3)(A). If Dash is successful in this litigation, injunctive relief may be an appropriate remedy. See Five Star Dev. Resort Communities, LLC v. iStar RC Paradise Valley LLC, No. 09-cv-2085, 2010 WL 2697137, at *4 (S.D.N.Y. July 6, 2010) (allowing claims for injunctive relief to proceed where the plaintiff's "factual allegations related to its entitlement to these remedies . . . are enough to raise a right to relief above the speculative level"). Thus, at this point, it

would be premature to dismiss Dash's claim for injunctive relief.

Accordingly, Axiom's motion to dismiss Dash's claims for misappropriation of trade secrets is **denied.**

IV.

Axiom also moves to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(7) on the basis that Dash has not joined Martin as a defendant in this case, arguing that Martin is a necessary party to this litigation under Federal Rule of Civil Procedure 19. "Rule 19 sets[] forth a two prong test to determine whether an action must be dismissed pursuant to a Rule 12(b)(7) motion." Fanbrella, Inc. v. EDT Prods., Inc., 185 F.R.D. 144, 147 (E.D.N.Y. 1999). First, it must be determined whether the third party is "necessary" to the action by asking: (1) whether complete relief can be granted to the present parties; or (2) whether a third party claims an interest in the disposition of the current proceedings, and whose interest would be impaired if that third party were not joined in the action. Id. at 147-48. In this case, complete relief can be granted among the present parties. Dash has sued only Axiom, and relief can be obtained against Axiom without interfering with Martin's rights because any claims that Dash may have against Martin are currently being arbitrated pursuant to a mandatory arbitration clause provided in Martin's employment

agreement with Dash and, in this case, Dash is not seeking any relief pursuant to the terms of that employment agreement. See Def.'s Memo., ECF No. 29, at 3; Pl.'s Opp., ECF No. 30, at 17. Any potential interest that Martin may have in this litigation is adequately protected by his ability to represent those interests in arbitration. See MasterCard Int'l, Inc. v. Visa Int'l Serv. Ass'n, Inc., 471 F.3d 377, 387 (2d Cir. 2006) ("Necessary parties under Rule 19(a)(2)(i) are only those parties whose ability to protect their interests would be impaired because of that party's absence from the litigation."). Moreover, Martin, as the third party, has not claimed an interest in the litigation. See Peregrine Myanmar Ltd. v. Segal, 89 F.3d 41, 49 (2d Cir. 1996) ("It is the absent party that must claim an interest."). Although Martin's actions are important to the facts of this case, this does not make him a necessary party within the meaning of Rule 19, and the fact that Axiom may be enjoined does not parties other than Axiom necessary to this litigation. See Edward B. Beharry & Co., Ltd. v. Bedessee Imports Inc., No. 09-cv-77, 2013 WL 12363612, at *4 (E.D.N.Y. June 24, 2013) (finding that a third party was not a necessary party despite the plaintiff's seeking injunctive relief where the injunctive relief sought "would not require imposing any affirmative obligation" on that third party); see also Peregrine Myanmar, 89 F.3d at 48 ("Complete relief can be accorded even

without the [third party], because nothing . . . requires the [third party] to do anything or change any of its positions."). Accordingly, Martin is not a necessary party to this litigation, and Axiom's motion to dismiss pursuant to Rule 12(b)(7) is **denied.**

V.

The Court has considered all the arguments of the parties. To the extent not specifically addressed above, the arguments are either moot or without merit. Axiom's motions to dismiss the plaintiff's claims for misappropriation of trade secrets pursuant to Rules 12(b)(6) and 12(b)(7) are **denied.** The Clerk is directed to close all pending motions.

SO ORDERED.

Dated: **New York, New York**
March 21, 2023

John G. Koeltl
United States District Judge